



Comptroller General
of the United States

Washington, D.C. 20548

Putnam

Decision

Matter of: George H. Mikos
File: B-245117.2
Date: June 19, 1992

DIGEST

Claimant requests reconsideration of our prior decision, George H. Mikos, B-245117, Jan. 21, 1992, in which we held that even though an employee may have submitted a schedule for use of annual leave prior to expiration of the 1986 leave year, his annual leave may not be restored where he canceled the leave requested for reasons other than exigency or sickness. Our settlement of claims is based upon the written record only. The employee has not presented any new material evidence in support of his claim. Therefore, our holding in our prior decision is affirmed.

DECISION

Mr. George H. Mikos, a retired employee of the Department of the Army, has requested reconsideration of our decision, George H. Mikos, B-245117, Jan. 21, 1992. We held that Mr. Mikos' claim for restoration of 172 hours of annual leave which was forfeited during the 1986 leave year could not be allowed since he canceled the leave requested for reasons other than exigency or sickness.

Mr. Mikos contends that our decision to deny restoration of his 1986 annual leave is without merit and is based upon assumptions which are not supported by documented evidence. He states that approval of the use of his leave by his supervisor was not required. Mr. Mikos also says that he has documented proof that he scheduled the use of his leave within the proper timeframe and requested that it be restored before his disability retirement was approved in accordance with regulations governing optional-in-lieu of disability retirement.

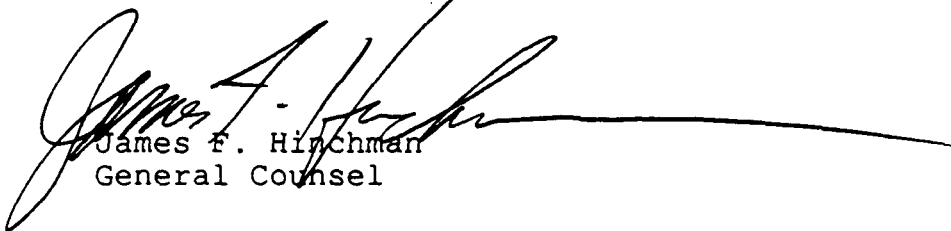
In our prior decision, we stated that even though Mr. Mikos may have submitted a schedule for the use of his annual leave prior to the expiration of the 1986 leave year, his annual leave may not be restored since he canceled the leave requested for reasons other than exigency or sickness.

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The claims settlement authority of this Office is founded on a determination of the legal liability of the United States under the factual situation involved as established by the written record. The burden is on the claimant to establish the liability of the United States, and his right to payment. Our settlement of claims is based upon the written record only.¹

Here, the record shows there was nothing to prevent Mr. Mikos from using his annual leave during the 1986 leave year. In December 1986, Mr. Mikos had an option either to: (1) retire on disability and receive a lump-sum payment for his 172 hours of excess annual leave; or (2) exhaust his sick leave and remain on the rolls of the Department of the Army for over 1-1/2 years, continue to receive his full salary, and continue to accumulate annual and sick leave. He chose the latter. However, in doing so, Mr. Mikos forfeited the 172 hours of annual leave which he had not used during 1986. This forfeited leave may only be restored under the limited circumstances set forth in 5 U.S.C. § 6304(d) (1) (1988) based on exigencies of the public business or sickness. The record shows that Mr. Mikos canceled the annual leave he requested for use in 1986 for reasons other than exigency or sickness.

Accordingly, since Mr. Mikos has not presented any new material evidence in support of his claim and the evidence of record and his contentions have been fully considered, there is no basis for reversal of our decision of January 21, 1992, and it is affirmed.



James F. Hinchman
General Counsel

¹See 4 C.F.R. 31.7 (1992).